

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

ADRIAN WRZESNIEWSKI DL No. W6220008418308 (Wisconsin) ¹))) Order No.: WI-2012-5001-IMHA) Service) Date: _____) Time: _____)) Person Served: _____
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IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order ("ORDER") by the Secretary of Transportation (the "Secretary") pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(5), 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation ("USDOT"), Darin G. Jones. This ORDER applies to **ADRIAN WRZESNIEWSKI** (referred to herein as "you," "your," and/or "**WRZESNIEWSKI**").

The Secretary and the FMCSA find your continued operation of commercial motor vehicles, as defined in 49 C.F.R. § 390.5,² constitutes an "**IMMINENT HAZARD.**" This finding means that based upon your present state of unacceptable safety compliance, your operation of commercial motor vehicles poses an imminent hazard to the public.

¹ Class D, Non-CDL license.

² Under 49 C.F.R. § 390.5 commercial motor vehicle includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle-- (1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION OF COMMERCIAL MOTOR VEHICLES AND/OR GOODS.

If you are served this ORDER while operating a commercial motor vehicle in interstate or intrastate commerce, you must immediately park such vehicle and arrange for a fully qualified driver to take over operation of the vehicle. You may not continue to operate the commercial motor vehicle.

NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY ANY COMMERCIAL MOTOR VEHICLE BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

I.
JURISDICTION

ADRIAN WRZESNIEWSKI is a driver of commercial motor vehicles in interstate or intrastate commerce subject to the commercial driver's license requirements of 49 C.F.R. Part 383. ADRIAN WRZESNIEWSKI is therefore subject to, and required to comply with, the requirements of the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133, 31144, and 31306).

II.
BASIS FOR ORDER

The basis for determining that your operation of a commercial motor vehicle poses an imminent hazard to the public is that you fail to comply with drivers' hours of service requirements, drivers' qualification requirements, commercial drivers' licensing requirements, and the controlled substances and alcohol testing requirements. You fail to comply with vehicle

roadside inspections and the orders of State law enforcement personnel to cease operating commercial motor vehicles unless and until identified out-of-service conditions are corrected. Individually and collectively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to you and to the motoring public.

III. BACKGROUND

On or about May 14, 2012, FMCSA initiated an investigation of WTSA US Express and uncovered violations by of the FMCSRs by you so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs. Your operation of commercial motor vehicles is reckless and demonstrates a complete refusal to comply with safety requirements despite repeated investigations and enforcement orders by State law enforcement personnel.

You do not comply with drivers' hours of service (HOS) requirements. Your negligent actions essentially ensure operation of commercial motor vehicles in a fatigued condition because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or other HOS regulations.

In addition, you do not follow FMCSA mandated controlled substance and alcohol testing requirements to ensure safe operation of commercial motor vehicles. You have not submitted to pre-employment testing, and are not enrolled in a controlled substance and alcohol testing program. You have openly defied at least three (3) State issued out-of-service orders and continued operating commercial motor vehicles despite being placed out of service and ordered to cease operating his vehicle after he was cited for transporting alcohol in the cab of his vehicle and after consuming alcohol within 4 hours before operating a CMV. You fail to follow FMCSA driver qualification requirements designed to ensure that drivers are qualified to operate

commercial motor vehicles. In open defiance of two (2) State issued out-of-service orders, you continued operating commercial motor vehicles despite not submitting to a medical qualification evaluation and not possessing a valid medical certificate. You have ignored commercial driver's license requirements and repeatedly violated at least three (3) State issued out-of-service orders for driving on a previously revoked commercial driver's license.

For instance, on June 13, 2011, while operating a CMV for TJA Express (Racine, Wisconsin) and transporting property in interstate commerce between West Allis, Wisconsin and Grove City, Ohio, you were stopped and inspected by the Wisconsin State Police, Commercial Motor Vehicle Enforcement Division. You were cited for failing to have a commercial driver's license, placed out of service, and ordered to cease operating a CMV. On February 3, 2012, while operating a CMV for TJA Express (Racine, Wisconsin) and transporting property in interstate commerce between St. Louis, Missouri and Chicago, Illinois, you were stopped and inspected by the Illinois State Police, Commercial Vehicle Section. You were cited for failing to have a commercial driver's license, for consuming alcohol within 4 hours before operating your CMV, for failing to have a medical certificate, and for illegally transporting/possessing alcohol while operating a CMV. You were placed out of service and again ordered to cease operating a CMV. On March 1, 2012, while operating a CMV for TJA Express (Racine, Wisconsin) and transporting property in intrastate commerce between Columbus, Ohio and Fort Recovery, Ohio, you were stopped and inspected by the Ohio State Highway Patrol, Motor Carrier Enforcement Division. Once again, you were cited for failing to have a commercial driver's license, for possessing alcohol in the cab of the CMV, and for failing to have a medical certificate. You were also cited for not having driver's records of duty status ("logs") for the previous 7 days. You were placed out of service for a third time, and for a third time you were ordered to cease operating a CMV.

In a May 30, 2012 sworn statement provided to John Seidl, a Special Agent and Safety Investigator for the Wisconsin Division of the Federal Motor Carrier Safety Administration, you admitted operating a CMV for WTSA US Express/TJA Express (Racine Wisconsin) as recently as May 14, 2012. You also admitted:

1. The motor carriers you drive for were not enrolled in a drug and alcohol testing program.
2. You were not pre-employment alcohol and drug tested or enrolled in random alcohol and drug testing program.
3. You were not required to possess a CDL before operating commercial motor vehicles. You do not possess a valid CDL.
4. You were not required to be medically certified as qualified to operate commercial motor vehicles. You do not possess a valid medical certificate.

IV. REMEDIAL ACTION

To abate this imminent hazard, and before you will be permitted to resume operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

1. **You may not operate a commercial motor vehicle in interstate and/or intrastate commerce until you have fully complied with the Remedial Actions set forth in this section.**
2. **You must provide documentation to the Field Administrator, Midwestern Service Center to show that you have undergone training to ensure you understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders, and demonstrate successful completion of that training.**
3. **You must provide documentation to the Field Administrator, Midwestern Service Center to show that you have a valid commercial driver's license and valid medical examiner's certificate.**
4. **You must demonstrate to the Field Administrator, Midwestern Service Center full compliance with all applicable controlled substance and alcohol testing**

requirements within 49 C.F.R. parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing).

5. You must provide documentation to the Field Administrator, Midwestern Service Center to show that you have undergone training in the hours of service requirements within 49 C.F.R. Part 395, and demonstrate successful completion of such training.
7. You must comply with all Orders issued by FMCSA.

V. RECISSION OF ORDER

You are subject to this ORDER unless and until the ORDER is rescinded by FMCSA.

Unless and until this ORDER is rescinded you are prohibited from operating any commercial motor vehicle, as defined by 49 C.F.R. § 390.5, in interstate or intrastate commerce. Before you are permitted to operate any commercial motor vehicle this ORDER must be rescinded. This ORDER will not be rescinded until the Field Administrator for the Midwestern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this ORDER have been fully satisfied and acceptable documentation submitted. **You cannot avoid this Operations Out-of-Service Order by continuing to operate under another name or by driving for another motor carrier.**

Prior to rescission of the Order, you will be required to:

1. **IDENTIFY THE CAUSE FOR YOUR NONCOMPLIANCE.**
2. **DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS YOU INTEND TO TAKE TO OVERCOME YOUR NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).**
3. **DEVELOP AND CERTIFY YOUR COMMITMENT TO COMPLY WITH THE FMCSRs.**
4. **EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION.**

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Midwestern Service Center, with a copy to the Division Administrator, Wisconsin Division, at the following addresses:

Field Administrator, Midwestern Service Center
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, 300A
Matteson, Illinois 60443

Division Administrator, Wisconsin Division
Federal Motor Carrier Safety Administration
1 Point Place, Suite 101
Madison, Wisconsin 53719

VI.

FAILURE TO COMPLY

Failure to comply with the provisions of this ORDER will subject you to an action in the United States District Court for equitable and/or declaratory relief and civil penalties. You may be assessed civil penalties of not less than \$2,500 and be disqualified from operating commercial motor vehicles for not less than 180 days if you operate a commercial motor vehicle in violation of this ORDER. You may be assessed civil penalties of not less than \$5,000 and be disqualified from operating commercial motor vehicles for not less than two years and not more than five years for a second violation of this ORDER. (*See* 49 U.S.C. §§ 521(b)(2)(A) and 31310(i), and 49 C.F.R. § 386.82(a)(4)). Knowing and/or willful violation of the provisions of this ORDER may also subject you to criminal penalties. (*See* 49 U.S.C. § 521(b)(6)).

VII.

ADDITIONAL PENALTIES FOR OTHER VIOLATIONS

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this ORDER. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII.
RIGHT TO REVIEW

You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of the issuance of this ORDER. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to the Field Administrator, Midwestern Service Center, at the following addresses:

Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

Field Administrator, Midwestern Service Center
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, 300A
Matteson, Illinois 60443

The request must state the material facts at issue which you believe dispute or contradict the finding that your operation of a commercial motor vehicle constitutes an “imminent hazard” to the public.

A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY.

Date: _____

Darin G. Jones, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration